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Nos. 94-1941 and 94-2107

IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

UNITED STATES OF AMERICA,
Petitioner,
v.
COMMONWEALTH OF VIRGINIA, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF AMICI CURIAE OF WELLS COLLEGE, SOUTHERN VIRGINIA COLLEGE AND SAINT MARY'S COLLEGE SUPPORTING AFFIRMANCE

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INTEREST OF *AMICI CURIAE*

Wells College, founded in 1868, is a private women's college located in Aurora, New York. Saint Mary's College, founded in 1842, is a private women's college located in Raleigh, North Carolina. Southern Virginia College, a private college located in Buena Vista, Virginia, has been dedicated to educating women since its founding in 1867. For more than a century, these schools have provided high quality education for women. Throughout their history, they have become enthusiastic supporters of the pedagogical value of single-gender education. In-

deed, Wells, Saint Mary's and Southern Virginia College believe that they and other single-gender educational institutions provide needed diversity in American post-secondary education.

Because *amici* are committed to the education of women in a single-gender environment, *amici* urge this Court to protect the ability of these institutions to continue to offer single-gender education.*

SUMMARY OF ARGUMENT

Amici Wells, Saint Mary's and Southern Virginia College are all private liberal arts colleges for women. These single-gender institutions provide excellent education in the liberal arts and offer an environment conducive to producing female leaders. Indeed, the Fourth Circuit Court of Appeals in this case twice affirmed the District Court's findings that single-gender educational opportunities are valuable for both males and females. Said the Court in this case:

> Thus, while the data support a pedagogical justification for a single-sex education, they do not materially favor either sex. Both men and women appear to have benefited from single-sex education in a materially similar manner.

United States v. Commonwealth of Virginia, 976 F.2d 890, 897-98 (4th Cir. 1992) (VMI I); *see also United States v. Commonwealth of Virginia*, 44 F.3d 1229, 1239 (4th Cir. 1995) (VMI II) (reaffirming that single-gender education benefits both sexes). Similarly, in *Mississippi University for Women v. Hogan*, 458 U.S. 718 (1982), this Court also recognized the viability of single-gender education. *Id.* at 728, 732, n.17. This Court's decision in *Mississippi University for Women v. Hogan* and the

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* Petitioner/Cross-Respondent and Respondents/Cross-Petitioners consented to the filing of this brief. Copies of the consent letters have been filed with the Clerk.

District Court's findings in this case support the conclusion that there is a legitimate and important pedagogical justification for single-gender education.

Amici urge this Court to affirm that finding with respect to single-gender education and to construct a decision that will allow the continuation of single-gender education in the United States.

ARGUMENT

SINGLE-GENDER EDUCATION PROVIDES SUBSTANTIAL EDUCATIONAL BENEFIT TO WOMEN

As is amply demonstrated by the evidence considered by the District Court in this case, a large number of studies have confirmed the value and importance of single-gender education. *See, e.g.*, Marvin Bressler & Peter Wendell, *The Sex Composition of Selective Colleges and Gender Differences in Career Aspirations*, 51 J. Higher Educ. 650, 662 (1980), cited in the Circuit Court's opinion, *VMI I*, 976 F.2d at 897. Acknowledging the merit of these studies and the testimony supporting them, the District Court in this case found that men and women are treated differently in the classroom and women have more chances for leadership at single-sex institutions. *United States v. Commonwealth of Virginia*, 852 F.Supp. 471, 480 (W.D. Va. 1994). The District Court also found that the educational benefits flowing from a single-gender environment cannot be replicated in a coeducational setting. Thus, concluded the District Court, single-gender education adds an important measure of diversity in an overall educational system. *United States v. Commonwealth of Virginia*, 766 F. Supp. 1407, 1415 (W.D. Va. 1991).

The Circuit Court in this case expressly adopted the District Court's factual findings, concluding that single-gender education "yields concrete educational benefits." *VMI II*, 44 F.3d at 1239. In reaching its conclusion, the Circuit Court stated:

> This should not be surprising in light of common experience that a sex-neutral atmosphere can be less distracting to late adolescents in an educational setting where the focus is properly on matters other than relationships between the sexes.

VMI II, 44 F.3d at 1238.

Based on the factual record before it, the Fourth Circuit Court held:

> Just as a state's provision of publicly financed education to its citizens is a legitimate and important governmental objective, so too is a state's opting for single-gender education as one particular pedagogical technique among many.

VMI II, 44 F.3d at 1239.

In fact, several studies published since the Fourth Circuit Court's ruling confirm its conclusion that single-gender education offers significant advantages when compared to coeducation. *See, e.g.*, Mikyong Kim & Rodolfo Alvarez, *Women-Only Colleges: Some Unanticipated Consequences*, 66 J. Higher Educ. 641 (Nov./Dec. 1995); Daryl G. Smith, Lisa W. Wolf, and Diane E. Morrison, *Paths to Success: Factors Related to the Impact of Women's Colleges*, 66 J. Higher Educ. 245 (May/June 1995); *see also Growing Smart: What's Working for Girls in School*, Report Commissioned by the American Association of University Women Educational Foundation, Executive Summary and Action Guide, Oct. 1995. The popular press has echoed these conclusions, reporting that women's colleges produce successful leaders in the workplace. *See, e.g.*, "A Burst of Popularity," U.S. News & World Report, Sept. 26, 1994, at 105, cited in the Circuit Court's opinion, *VMI II*, 44 F.3d at 1238-39.

Despite the Circuit Court's conclusions in this case and this Court's holding in *Mississippi University for Women*, several commentators and *amici* supporting the government assert that public support of any kind of single-

gender education is unconstitutional. They urge this Court to adopt a strict scrutiny standard and measure every institution according to that standard. *See* Brief of *Amici Curiae* National Women's Law Center, et al., On Petition for Writ of Certiorari, *U.S. v. Virginia, cert. granted*, —— U.S. ——, 116 S.Ct. 281 (1995), p. 9. Single-gender education, they claim, can be supported only as remedial action on behalf of women, not because single-gender education is valuable standing by itself.

The implication is that even a private institution will be unable to offer single-gender education if it receives federal financial assistance, state aid, or merely a state or federal tax exemption. Indeed, since *Grove City College v. Bell*, 465 U.S. 555 (1984), and the resulting amendments to Title IX, the government has maintained consistently that federal jurisdiction over the entire institution is triggered if a private institution receives any public financial assistance, direct or indirect. Although the Second Circuit Court of Appeals (the Circuit in which Wells is located) twice reaffirmed that such government funding does not transform a private institution into a public one, *Albert v. Carovano*, 851 F.2d 561 (2d Cir. 1988); *Powe v. Miles*, 407 F.2d 73 (2d Cir. 1968); *accord Rice v. President and Fellows of Harvard College*, 663 F.2d 336 (1st Cir. 1981), the government and its supporting *amici* seem to suggest that a private institution, by accepting public benefits or taxpayer largess, becomes subject to the same constitutional scrutiny as public institutions. Thus, they argue, traditionally private institutions will be unable to offer single-gender education.

Amici do not believe that this Court has made any such ruling. Already, however, lawsuits are emerging to test this argument and the viability of single-gender admissions policies at private institutions. A District Court in Georgia may soon be adjudicating the rights of a male applicant seeking admission to Spelman College, a private women's college in Atlanta, Georgia. The Chronicle of

Higher Education (Oct. 27, 1995, at A29) reports the male applicant asserts that because Spelman receives federal financial assistance, it cannot discriminate against men in its admissions policy without violating Title IX. Thus, the issue of how far this Court's ruling in this case will extend is already being raised. Similarly, the U.S. Education Department is reviewing a complaint filed recently against Converse College, a private women's college in South Carolina. Converse is the college where a program similar to the one at Mary Baldwin College (discussed in the record in this case) has been established. The complaint chailenges the College's receipt and use of state funds to create a new, single-gender leadership program for women, urging that this aid makes the institution a public one that is subject to Title IX's prohibition on discrimination in admissions.

Contrary to the arguments urged by the government and its supporters in this case, *amici* believe strongly that private women's colleges are protected by Title IX and the U.S. Constitution. Recognizing, however, that almost every private, single-gender institution could not survive without public funds, *amici* urge that this Court clear any remaining doubt. This Court's decision in ***Mississippi University for Women*** and the District Court's findings in this case support the holding that providing the option of a single-gender college education is a legitimate and important aspect of both a public and private system of higher education.

Against such a background, this Court cannot allow a misinterpretation of its holding in ***Mississippi University for Women***, *supra*. Instead, it should reaffirm the value of single-gender education, hold firmly and clearly that it has its place in the American higher education system, and rule that educationally successful institutions like *amici* may constitutionally offer single-gender education.

CONCLUSION

For the foregoing reasons, the Court should affirm the Fourth Circuit Court's decision upholding the constitutionality of the proposed single-gender remedial plan.

Respectfully submitted,

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